MONTANA STATE AUDITOR
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Protecting Montana's consumers through insurance and securities regulation

Revised Captive Insurance Laws
SB 161

What is a Captive? A captive insurance company primarily insures the risks of its owners and sometimes related or affiliated firms. It serves the insurance needs of the owners and related parties without the uncertainties of commercial availability and cost. Captives provide an insurance alternative for businesses and organizations, which is particularly important in today's difficult insurance market when companies are looking for options.

Here in Montana: The law requires Montana-based captives to locate their books and records in Montana and hold an annual board meeting here. Captives do not interact with consumers in the same fashion as traditional multi-line companies, so the State Auditor's Office has been able to create a streamlined regulatory environment for them. In Vermont, the first state to allow captives, it is a $1 billion-a-year industry. Vermont collected more than $19 million in premium taxes from captive insurers last year. Currently, there are 22 captive insurance companies formed in Montana to insure rural hospitals, nursing homes, fuel stations, commercial trucking firms, an investment firm, a medical professional firm, a construction company, and attorneys. We have licensed 8 new captive insurance companies during calendar year 2006. Two Montana based-captive management firms opened for business and five more captive management companies contract with Montana captives to do business in Montana. Long-term benefits to Montana include the potential for new jobs, an expanded tax base and increased economic activity.

Why we need legislation: The legislation **expands the types of captive insurance companies allowed in Montana, increases the types of coverage they can provide**, and allows Montana to stay current with laws in other domestic domiciles**.** It provides Montana a greater opportunity to develop its captive industry, and businesses and associations more options to tailor a captive to meet their needs.

Highlighted Bill Details:

33-28-101. Definitions:
- Adds a definition for captive reinsurance company.
- Expands the definition of a pure captive company to include not just the parent company and its owned affiliates, but also controlled unaffiliated businesses.
- Defines "controlled unaffiliated business entity" as an unaffiliated company that has an existing contractual relationship with the parent or its affiliate and whose risks are managed by the parent company.
- Adds a definition for protected cell captive insurance company that allows minimum capital and surplus requirements to be provided by more than one sponsor and that insures the risks of separate participants.
- Replaces the definition of "sponsored captive insurance company" with the "protected cell" definition.
- Adds a definition for risk retention group.

New Section. Captive Insurance regulatory and supervision account.

- Creates a captive insurance regulatory and supervision fund. This fund will provide the commissioner or staff the financial means to administer this chapter and for reimbursement of reasonable expenses in promoting the captive insurance industry in Montana.
- Transfers 10% of premium taxes collected by captive insurance companies to this fund.
- Transfers any remaining balance in the captives supervision account at the end of each fiscal year back to the general fund.

New Section. Investments by protected cell captive insurance companies.

- Allows protected cell captive insurance companies to combine their assets for investment purposes, even though their assets must remain segregated for accounting purposes.

33-28-102. Licensing--authority.

- Specifies that a captive insurance company or branch captive may not provide health insurance coverage or a group health plan except for heath plan coverage that is limited to the parent company and its owned affiliates.
- Allows pure captive insurance companies to insure the risks of controlled unaffiliated businesses (those businesses that they have a contractual relationship with, but no ownership interest.)

33-28-104. Minimum capital surplus--letter of credit.

- Reduces minimum capital and surplus requirements for protected cell captives from $1 million to $500,000, and allows further reductions, at the commissioner's discretion, to no less than $250,000.
- Deletes the requirement that a captive insurance company that is also organized as a reciprocal insurer must have capital and surplus of $1 million.

33-28-105. Formation of a captive insurance companies.

- Eliminates the requirement that a pure captive or a sponsored captive insurance company be incorporated as a stock insurer.
- Adds the requirement that all captive insurance companies be organized as a business entity as defined in this chapter.
- Adds the requirement that a captive formed as a limited liability company must have at least one manager that is a resident of this state, and a captive that is a reciprocal insurer must have at least one member of the subscriber's advisory committee that is a resident of this state.
- Adds the requirement that a branch captive insurance company must maintain a principal place of business in this state for its branch operations in this state and also that a branch captive that writes employee benefit business for its parent or affiliated companies is subject to the provisions of ERISA.

33-28-107. Reports and Statements.

- Adds specific information regarding the time and procedure for filing required annual financial condition reports.
- Requires that financial statements filed by captives be considered confidential.
- Specifies different financial reporting requirements for risk retention groups and allows letters of credit as assets to be used to establish minimum capital and surplus requirements.

33-28-202. Legal investments.

- Requires that risk retention groups comply with the investment requirements contained in Title 33, Chapter 12.

33-28-206. Rules.

- Expands the commissioner's rulemaking authority to include rules relating to: redomestications, risk retention groups, risk-based capital and holding company systems, letters of credit, risks managed by pure captives, standards to ensure that parent or affiliated companies are able to exercise control of the risk management function of any controlled unaffiliated entities to be insured by the captive, and the use of deductible reimbursement with workers compensation.

33-28-207. Applicable laws.

- Specifies that captive insurance companies and branch captives that write health insurance coverage or group health plans must comply with applicable state and federal laws.